

KOZLOFF STOUDT

Professional Corporation

By: Jeffrey R. Elliott, Esquire
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ATTORNEYS FOR DEFENDANTS,
WEIDENHAMMER SYSTEMS CORP.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AKANTHA SUSKO,	: Civil Action No. 20-cv-06543-JFL
	:
Plaintiff	: JURY TRIAL DEMANDED
	:
vs.	:
	:
WEIDENHAMMER SYSTEMS	:
CORPORATION,	:
	: Assigned to:
Defendants	: Joseph S. Leeson, Jr., U.S.D.J.

**MOTION OF DEFENDANT, WEIDENHAMMER SYSTEMS CORPORATION, TO
DISMISS AMENDED COMPLAINT UNDER RULES 12(b)(6) AND 8(a) OF THE
FEDERAL RULES OF CIVIL PROCEDURE**

Defendant, Weidenhammer Systems Corporation ("Weidenhammer"), through its undersigned attorneys, Jeffrey R. Elliott, Esquire; Joan E. London, Esquire and Kozloff Stoudt, Professional Corporation, moves this Honorable Court to Dismiss the Amended Complaint filed by the Plaintiff, Akantha Susko ("Susko"), pursuant to Rules 12(b)(6) and 8(a) of the Federal Rules of Civil Procedure as follows:

1. Weidenhammer is a private company that provides diversified information technology solutions, based in Wyomissing, Berks County, Pennsylvania.

2. Susko, who is a female, was hired by Weidenhammer on or about February 13, 2018 as an Account Executive.

3. Susko worked for Weidenhammer as an Account Executive from February 13, 2018 until her employment was terminated by mutual agreement seven months later on September 19, 2018; and at all time material and relevant hereto her immediate supervisor was Gene Farro ("Farro"), Sales Manager.

4. Susko claims that during her employment, she suffered discrimination because of her sex in account assignments and compensation.

5. Susko claims that Weidenhammer assigned and re-assigned accounts to male co-workers, and paid her less than at least one male Account Executive, and that this conduct was discriminatory on the basis of her sex (female).

6. Susko further claims that her employment was terminated after she "complained" to Farro, and to Human Resources of the alleged discriminatory conduct, and that this amounted to retaliatory action in her regard.

7. Susko filed a Charge of Discrimination with the United States Equal Employment Opportunity Commission (EEOC), alleging discrimination based upon her sex (female) while employed by Weidenhammer, and alleging that she had complained and that her termination was in retaliation for having made claims of discrimination.

8. Susko filed the initial Complaint in this action on after receiving a Notice of Right to Sue from the EEOC, and Weidenhammer executed a Waiver of Service of Summons on December 30, 2020. A true and correct copy of the initial Complaint is attached hereto, incorporated herein, and marked as Exhibit "A."

9. On March 1, 2021, Weidenhammer filed a Motion to Dismiss the initial Complaint pursuant to Rules 8(a) and 12(b)(6) of the Federal Rules of Civil Procedure.

10. On March 15, 2021, in response to the Motion to Dismiss, Susko filed an Amended Complaint.

11. The two Count Amended Complaint, like the original Complaint, alleges violation of Title VII of the Civil Right Act of 1964 (Title VII) at Count I, and violation of the Pennsylvania Human Relations Act (PHRA) at Count II, and alleges discrimination and retaliation in violation of the respective statutes at each Count. A true and correct copy of the Amended Complaint is attached hereto, incorporated herein, and marked as Exhibit "B."

12. The Amended Complaint should be dismissed in its entirety for the following reasons, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure:

a) Susko's claims of sex discrimination under Title VII and the PHRA do not state claims for which relief may be granted, where the Complaint does not set forth with sufficient specificity alleged male comparators;

b) Susko's claims of sex discrimination under Title VII and the PHRA should be dismissed, where Susko has not sufficiently alleged that she was qualified for the Account Executive position;

c) Susko's claims of retaliation under Title VII and the PHRA do not state claims for which relief may be granted, as neither Count alleges that retaliation for complaining of purported discrimination was the "but for" cause of the termination of her employment; and,

d) Susko's claims of sex discrimination under Title VII and the PHRA fail to state claims for which relief may be granted, where allegations of discriminatory conduct are replete with (a) *stray remarks* by non-decisionmakers, (b) subjective impressions of third parties not in a position to be in possession of facts, (c) innuendoes, and, (d) hearsay.

13. In the alternative, should the Court deny the Rule 12(b)(6) Motion to Dismiss, Weidenhammer respectfully requests that the Court, pursuant to Rule 8(a) of the Federal Rules of Civil Procedure, dismiss the Amended Complaint for its failure to set forth sufficient facts to allow Weidenhammer to prepare a legally sufficient defense to this action.

14. Weidenhammer hereby incorporates by reference all averments of fact and arguments of law contained in the accompanying Brief in support of Motion to Dismiss the Amended Complaint.

WHEREFORE, Defendant, Weidenhammer Systems Corporation, respectfully requests that this Honorable Court grant its Motion to Dismiss the Amended Complaint of Plaintiff, Akantha Susko, in its entirety, pursuant to Rules 8(a) and 12(b)(6) of Civil Procedure, for failure to state any claim for which relief may be granted.

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/s/ Jeffrey R. Elliott

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